the appellants were not entitled to invoke Condition 30 of The (Revised) Singapore Conditions of Sale.

We accordingly affirmed the declarations made by the learned Chief Justice.

Appeal dismissed.

Solicitors: *L.A.J. Smith; Drew & Napier.*

J.H. KINOSHITA v. BOARD OF ARCHITECTS, SINGAPORE

[O.C.J. (Chua J.) February 3, 1981]

[Singapore — Originating Motion No. 68 of 1979]

Architects — Professional misconduct — Whether there was attempt by appellant to supplant another architect — No available code of professional conduct prescribed under s. 22(3) of Architects Act 1976 — Only guidelines available — Code of Professional Conduct of the Singapore Institute of Architects, Codes 9 & 10 — Code of Professional Conduct of the Architects Registration Council of the United Kingdom, Codes 3:4 & 3:5 — Code of Professional Conduct of the Royal Institute of British Architects, Codes 10 & 11.

The appellant, a qualified architect registered in Singapore, was found guilty of improper act or conduct for having undertaken to work for the Chartered Bank with the knowledge of the appointment and position of Messrs. Swan and MacLaren as architects for the Chartered Bank and without having obtained the permission of Messrs. Swan and MacLaren to do such work. He was suspended from practising as an architect for one month by the respondent. He appealed against the said decision.

Held, allowing the appeal: (1) there is now no available code of professional conduct and ethics prescribed under section 22(3) of the Architects Act 1976. There are, however, guidelines as to the standard of professional conduct required of an architect found in the SIA Code, the ARCUK Code and RIBA Code;

(2) looking at the SIA Code, the ARCUK Code, the RIBA Code, it is to be noted that an architect is not required to obtain the permission of the architect previously employed. All that the architect need do is to communicate with the architect previously employed and enquire and ensure that his engagement has been satisfactorily terminated (SIA Code); this the appellant did when he was appointed in March, 1977;

(3) under the ARCUK Code and the RIBA Code an architect need not even make such enquiry; all he need do is to notify his appointment to the architect previously employed;

(4) documentary and oral evidence indicated clearly that the appellant was engaged by Singapore Land alone to prepare a presentation of the possible development of the Bank's site and that the appellant's commission and work for Singapore Land had ceased when Singapore Land on December 22, 1976 agreed with the Chartered Bank to defer the negotiations for a joint venture and to accept appointment as the Bank's Development Managers for the development of the Bank site; therefore, the ingredients of the charge had not been proved, and the appellant should not have been found guilty by the Board.

Per curiam: By-law 13 of the Architects By-Law, 1941, was *ultra vires* the provisions of the Architects Ordinance and was null, void and invalid.

Cases referred to:-

(1) *Re Lee Kian Soo, An Architect* [1953] M.L.J. 195.

(2) *Chan Fook Wah* v. *Board of Architects* [1965] 2 M.L.J. 7.

ORIGINATING MOTION.

Lai Kew Chai for the appellant.

Harry Elias for the respondents.

Cur. Adv. Vult.

Chua J.: This is an appeal by James Hajime Kinoshita (the appellant), a qualified architect registered in Singapore, against the order of the Board of Architects, Singapore, (the Board) given on September 12, 1979, suspending him for one month to practise as an architect.

The appellant appeared before the Board on the following charge:

"You, James Hajime Kinoshita, a person registered under the Architects Act, are charged that you with knowledge of the appointment and position of Messrs. Swan and MacLaren as architects for the Chartered Bank (hereinafter referred to as 'the Bank') did undertake work or a commission for or on behalf of the Bank without having ascertained the position or having obtained the permission of Messrs. Swan and MacLaren to do such work and you are thereby guilty of such improper act or conduct as renders you, in the opinion of the Board, unfit to be an architect."

The facts are these. Sometime in early 1970 Swan and Maclaren, architects, received instructions from the Chartered Bank (the Bank) with regard to the development of the Bank's Head Office site at Battery Road (the Bank's site) in conjunction with the adjoining sites of which Swan and Maclaren supplied to the Bank at their request a schedule of ownership. The Bank proceeded to purchase the various sites concerned and at the same time on the Bank's instructions Swan and Maclaren proceeded with plans to an advanced stage, namely, that of conditional planning approval. The history of Swan and Maclaren's negotiations with the Planning Department and the Bank indicates the usual delays from both planners and owners. Swan and Maclaren's work on this project extended from 1970 to approximately the end of 1976.

On the opposite corner to the Bank's site is the site of John Little which was being developed by Singapore Land Ltd. (Singapore Land). Pat Pacific Architects later known as P.T. Architects were employed by Singapore Land for their project and the appellant was at the material times a partner of P.T. Architects in Singapore and a partner in Palmer & Turner, Hong Kong. The appellant has been registered as an architect in Singapore since November 1972.

The Planning Department advised Swan and Maclaren to discuss with P.T. Architects the issue of a pedestrian tunnel under Battery Road to link these two developments and Swan and Maclaren duly contacted P.T. Architects on this matter.

In November 1976, it was suggested by the Bank that Singapore Land became an equity partner with the Bank for the proposed redevelopment of the Bank's site and that a new company be formed to develop the project. Singapore Land replied positively and it was agreed that Singapore Land would prepare for the Bank's review their own ideas on how best to proceed. It was further agreed that Singapore Land would employ their own architect to assist them to prepare this presentation.

After the agreement between the Bank and Singapore Land, Mr. Alan Davis, the General Manager of Singapore Land, telephoned the appellant in Hong Kong at Palmer & Turner and told the appellant

of the proposed joint venture between the Bank and Singapore Land and asked if he would be prepared to work for Singapore Land and help Singapore Land to prepare its presentation to the Bank. The appellant agreed to assist to prepare some sketch designs. The object of the Singapore Land to have these designs prepared was to help them to decide first of all whether the proposed joint venture was feasible. A few days later Mr. Alan Davis went to Hong Kong and discussed the matter with the appellant for four days. The appellant was requested to prepare the design development as quickly as possible.

On his return to Singapore Mr. Alan Davis wrote the following letter, dated November 22, 1976, to the appellant:

"Further to my meetings with you in Hongkong last week, I confirm our instructions to you to proceed with the sketch designs for a proposal to be submitted by Singapore Land to the Chartered Bank for the redevelopment of their head office in Singapore.

I confirm our agreement that you will be reimbursed for your work in connection with this on a time basis subject to your fee not exceeding S$25,000 without prior approval. In addition Singapore Land will be responsible for all your direct disbursements. In the event that we decide to proceed with this project and you are then appointed as our architect, the above will be absorbed into your architectural fee."

The Mass Rapid Transport was to go under the Bank's site. The appellant produced plans which contemplated the erection of the banking hall over the Mass Rapid Transport reserve with the bank chambers and tower block of offices behind. It would appear that the solution to this problem was what had held back the plans of Swan and Maclaren.

There was no contact between the appellant and the Bank in November 1976. The appellant was invited by Singapore Land to be present at the presentation in London which took place on December 10, 1976. The appellant's sole role there was limited to explaining his scheme and any questions that might arise. The presentation took about forty-five minutes as far as the appellant was concerned. The appellant's proposal to build the banking hall over the Mass Rapid Transport reserve won the immediate approval of the Bank's Board of Directors in London.

Several meetings were held in London in December 1976, after the presentation, between the Bank and Singapore Land. It then became clear that it was not possible at that time for the parties to immediately commit themselves to the proposed joint venture. As a result, at the request of the Bank, Singapore Land on December 22, 1976, agreed to act as Development Managers to the Bank in order to recommend a new consultant team and to prepare a new proposal for presentation to the Singapore Government. Consequent upon the Government's attitude to the proposal and certain other concessions which it was felt were necessary for the redevelopment scheme to be viable, Singapore Land and the Bank agreed to review their respective positions with a view to proceeding with the joint venture. In the meantime Singapore Land suggested that they be reimbursed their costs until a firm decision was made to proceed with the joint venture.

On his return to Hong Kong, the appellant, having completed the mandate given to him by Singapore Land, wrote to Singapore Land on December 16, 1976, six days after the London presentation, enclosing his Debit Notes. The first was for fees on time basis up to December 11, 1976 amounting to H.K.$72,625 and the other for out-of-pocket expenses incurred amounting to H.K.$16,520.82. These two Debit Notes clearly show that the relationship between Singapore Land and appellant had ended. Eventually these fees and expenses of the appellant were shared between Singapore Land and the Bank. This was a matter between Singapore Land and the Bank and was unknown to the appellant.

Early in January 1977, the Bank terminated the services of Swan and Maclaren on this project.

Consequent upon Singapore Land agreeing to act as Development Managers to the Bank, Singapore Land proceeded with the preliminary selection process for a consultant team.

Singapore Land in their capacity as Development Managers wrote on February 11, 1977, to the appellant asking the appellant to submit his fee proposals for the proposed redevelopment of the Bank's site for Singapore Land's consideration. The appellant replied on February 14, 1977.

In February 1977, Singapore Land submitted to the Bank their recommendations on the appointment of the consultant team. They recommended that Palmer & Turner, Hong Kong, be the architects. On March 16, 1977, the Bank confirmed their approval of Singapore Land's recommendations regarding the consultant team.

On being told of his appointment the appellant on March 25, 1977, wrote to Swan and Maclaren informing them that P.T. Architects had been instructed by the Bank to undertake architectural work in respect of the project and that it was understood that Swan and Maclaren's instructions had been satisfactorily terminated and asked for confirmation. On April 7, 1977, Swan and Maclaren replied that their appointment had not been satisfactorily terminated. The appellant then took the matter up with the Bank. On April 23, 1977, the Bank wrote to the Board stating that there was a dispute between Swan and Maclaren and themselves in regard to the bill rendered by Swan and Maclaren amounting to $1.3 million and for which the Bank said Swan and Maclaren was not entitled to anything at all. The Bank sought confirmation from the Board that it was in order for P.T. Architects or any other firm of architects, to accept instructions from the Bank. The Bank said that they were prepared to give an undertaking that they would meet the amount of any final judgment or award or settlement that might eventuate if it was ultimately found that the bill of Swan and Maclaren was payable.

On May 19, 1977, the Board granted permission to the Bank to engage another architect to undertake its project. The Bank gave a banker's guarantee for $1,353,066 as security deposit to cover Swan and Maclaren's claim. After this the appellant took up position and still acts for the Bank.

On March 12, 1977, Swan and Maclaren, through their solicitors, laid a complaint to the Board against the appellant's firm. The complaint states:

"In our view the conduct of Palmer & Turner/Pat Pacific Architects is a flagrant breach of by-law 13 of the Architects Ordinance, 1941. It is obvious that knowing that our clients were commissioned they have engaged in work with the Chartered Bank to our clients' detriment and there can be little doubt of their complicity and guilt in this matter.

Specifically our clients' complaints against them are:—

(i) That they presented proposals in London in association with Singapore Land Ltd. with the knowledge that our clients were the bank's architects for this project.

(ii) That they had knowledge that our clients were the bank's architects is shown by their letter to our clients dated 21st August, 1974....

(iii) They undertook this work without our clients' knowledge and contrary to by-law 13."

Two years later, on May 25, 1979, Notice of Inquiry setting out the charge was sent to the appellant.

In 1941 the Board, under the powers conferred on it by the Architects Ordinance, 1941, made the Architects By-laws, 1941. By-law 13(13) and 13(19) provided:—

"13. The following acts and practices on the part of an Architect registered under this Ordinance are hereby prohibited and shall be deemed to be conduct which is infamous in a professional respect under section 8.

....

....

....

(13) Knowingly to undertake a commission while the claim for compensation or damage, or both, of an architect previously employed and whose employment has been terminated remains unsatisfied unless security for the due satisfaction of any award or judgment, which may be made or given in favour of the said architect has been given. The first named architect may report the matter to the Board of Architects and if he has reasonable grounds for not being satisfied with the Security the Board may forbid the second architect to proceed with the work and if he nevertheless proceeds with the work this shall be considered unprofessional conduct.

....

....

(19) To compete in any unfair or dishonest manner with a fellow architect."

But in 1952 in *Re Lee Kian Soo, An Architect*[1] Brown J. held that By-law 13 of the Architects By-laws, 1941, was *ultra vires* the provisions of the Architects Ordinance and was null, void and invalid. In 1965 in *Chan Fook Wah* v. *Board of Architects*[2] Winslow J. held the same view. As a consequence of these decisions there is now no available code of professional conduct and ethics prescribed under section 22(3) of the Architects Act, 1976. I am told that the Board has drafted such code and that it has been under consideration by the Attorney-General for some time. It is advisable that the code be prescribed as soon as possible.

The powers of the Board as to the cancellation, suspension, removal and reinstatement are to be found in section 12 of the Architects Act, 1976. Section 12(1) reads:

"12.—(1) Subject to the provisions of this section, the Board may by order cancel the registration of any registered architect or suspend him from practice for a period not exceeding one year under any of the following circumstances:—

(a) if he is convicted of any offence involving fraud or dishonesty or moral turpitude;

(b) if he offers or accepts any commission which in the opinion of the Board is an illicit commission;

(c) if his registration under this Act has been obtained by fraud or misrepresentation;

(d) if his qualification for registration under section 8 has been withdrawn or cancelled by the authority through which it was acquired or by which it was awarded;

(e) if he has been guilty of such improper act or conduct as renders him, in the opinion of the Board, unfit to be an architect.

(f) if it appears to the Board that he has contravened any provision of the code of professional conduct and ethics prescribed under section 22; and

(g) if it appears to the Board that he is no longer in a position to carry out the duties of an architect effectively in Singapore."

There are guidelines as to the standard of professional conduct required of an architect and they are to be found in (1) the Code of Professional Conduct of the Singapore Institute of Architects (SIA Code), (2) Code of Professional Conduct of the Architects Registration Council of the United Kingdom (ARCUK Code) and (3) the Code of Professional Conduct of the Royal Institute of British Architects (RIBA Code).

Code 9 of the SIA Code reads:

"9. An architect shall not attempt to supplant another architect nor must he compete with another architect by means of a reduction of fees or by any other inducements."

Code 10 of the SIA Code reads:

"10. An architect on being approached or instructed to proceed with professional work which was previously entrusted to another architect shall, before proceeding with such work, communicate in writing with the person previously employed and enquire and ensure that his engagement has been satisfactorily terminated."

Code 3.4 of the ARCUK Code reads:

"An architect shall not attempt to supplant another architect."

Code 3.5 of the same Code reads:

"An architect on being approached or instructed to proceed with work upon which he knows, or can ascertain by reasonable enquiry, that another architect is or has been engaged by the same client shall notify the fact to such architect."

It is to be noted that the emphasis is on "engaged by the *same client*" whereas in the SIA Code 10 the emphasis is on "before proceeding with *such work*."

Code 10 of the RIBA Code reads:

"A member or student must not attempt to supplant another architect, nor must he compete with another architect by means of a reduction of fees or by other inducements."

Code 11 of the same Code reads:

"A member or student on being approached or instructed to proceed with professional work upon which another architect was previously employed, shall notify the fact to such architect."

Looking at the SIA Code, the ARCUK Code, the RIBA Code and By-law 13(13) of the Architects By-laws, 1941, it is to be noted that an architect is not required to obtain the permission of the architect previously employed. All that the architect need do is to communicate with the architect previously employed and enquire and ensure that his engagement has been satisfactorily terminated (SIA Code) and this the appellant did when he was appointed in March

1977. Under the ARCUK Code and the RIBA Code an architect need not even make such enquiry; all he need do is to notify his appointment to the architect previously employed.

The appellant was charged that he did "undertake work or a commission for or on behalf of the Bank without ... having obtained the permission from Messrs. Swan and Maclaren to do such work."

The appellant admitted that he knew that Swan and Maclaren were the architects for the Bank, but he disputed that he undertook work or a commission for or on behalf of the Bank before his appointment by the Bank in March 1977.

Having regard to the documentary and oral evidence it is clear that the appellant was engaged by Singapore Land alone to prepare a presentation of the possible development of the Bank's site and that the appellant's commission and work for Singapore Land had ceased when Singapore Land on December 22, 1976, agreed with the Bank to defer the negotiations for a joint venture and to accept appointment as the Bank's Development Managers for the development of the Bank's site.

It is, therefore, clear that the ingredients of the charge against the appellant have not been proved, and the appellant should not have been found guilty by the Board.

The appellant was charged under section 12(1)(e) of the Architects Act, 1976. Counsel for the Board informs me that if By-law 13 had not been declared by the court to be null and void the appellant would have been charged under section 12(1)(f) of the Act for contravening the Code of professional conduct and ethics which is a lesser offence than section 12(1)(e).

As I said at the hearing what troubled me was that, assuming that the ingredients of the charge had been substantiated, would such act or conduct of the appellant render the appellant unfit to be an architect? I am of the view that it does not.

For these reasons I allowed the motion and set aside the order of suspension and ordered that the costs of the hearing before this court and before the Board be paid by the Board.

Motion allowed.

Solicitors: *Lee & Lee; Drew & Napier.*

LOW KOK TONG v. TEO CHAN PAN

[O.C.J. (Sinnathuray J.) September 1, 1981]
[Singapore — Civil Suit No. 628 of 1979]

Damages — Death — Claim for loss of future earnings — No available evidence for assessment — Civil Law Act (Cap. 30), s. 8.

The plaintiff, administrator of the deceased estate claimed for loss of future earnings due to the estate of the deceased under section 8 of the Civil Law Act (Cap. 30). The deceased died from injuries sustained in an accident between a military truck, in which he was travelling, and a motor lorry. He was 20 years old, and in national service. He received a gross monthly pay of $122.47. The mother said that the deceased had told her that he was going to sign on as a regular for 6 years. She also said that he had attended night classes doing an electrical course.

Held, dismissing the claim: the available evidence for assessment of damages was meagre and contradictory. It was not possible therefore even to begin to make an estimate of the probable future earnings of the deceased.

Per Curiam: "It is true, as was submitted for the defendant that *Gammell's case* is not binding on me, but ordinarily, because decisions of the House of Lords are always treated with respect in our courts, I would follow it if there is nothing in the facts of the case before me to distinguish it from *Gammell's* case."

[**Editorial Note:** The Court of Appeal (C.A. 57/81) on March 17, 1982 allowed the plaintiff's appeal and awarded him $27,000 for "loss of future earnings".]

Cases referred to:

(1) *Gammell* v. *Wilson & Anor.* [1980] 2 All E.R. 557; [1981] 1 All E.R. 578, H.L.

(2) *Pickett* v. *British Rail Engineering Ltd.* [1979] 1 All E.R. 774.

CIVIL SUIT.

Karuppan Chettiar for the plaintiff.

Cheong Yuen Hee for the defendant.

Cur. Adv. Vult.

Sinnathuray J.: When this part-heard action for negligence arising from a road accident was heard by D'Cotta J. on February 20, 1981, counsel for the plaintiff, the administrator of the estate of Low Eng Seah, deceased, in the course of his submission, for the first time, made a claim for loss of future earnings due to the estate of the deceased under section 8 of the Civil Law Act (Cap. 30). The submission was founded on the Court of Appeal decision in *Gammell* v. *Wilson & Anor.*[1] which counsel learnt a few days earlier.

At the conclusion of the hearing the judge, having found that the defendant was 50% to blame for the accident, assessed the dependency claim for the deceased's mother at $3,000 after taking into account the sum of $2,100 which she would receive out of the agreed sum of $4,200 due to the estate for loss of expectation of life. As for the claim for loss of future earnings due to the estate, the judge adjourned it to a date to be fixed by the Registrar.

D'Cotta J. retired at the end of February. The record of proceedings of the trial was prepared, and when it was ready, the action came on for hearing before me on the remaining issue for decision, the claim for loss of future earnings due to the estate. I dismissed the plaintiff's claim. At that time, I said: "There is no evidence, or reliable evidence before me to make a calculated speculation on the loss of future earnings for the 'lost years' of the deceased." The plaintiff appeals that I should now elaborate on that ground of my decision.

Before I do so, I must say something on *Gammell* v. *Wilson & Ors.*, now a decision of the House of Lords. The decision is an inevitable consequence of *Pickett's* case[2] where in the words of Lord Edmund-Davies in *Gammell's* case:

"This house found itself ineluctably driven to hold that an injured plaintiff whose working life had been shortened as a result of the defendant's negligence was entitled to be compensated for any loss of earnings during the period ('the lost years') when, but for his injuries, he would have been likely to continue at work."